

BOARD OF FORESTRY AND FIRE PROTECTION

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MINUTES BOARD OF FORESTRY AND FIRE PROTECTION February 5, 6, & 7, 2002 Sacramento, California

MEMBERS PRESENT:

Stan Dixon, Chairman
Mark Bosetti
Robert Heald
Kirk Marckwald
Tharon O'Dell
Gary Rynearson

BOARD STAFF PRESENT:

Daniel R. Sendek, Executive Officer
and Acting Executive Officer, Foresters Licensing
Donna Stadler, Executive Assistant
Fran Henson, Board Consultant

DEPARTMENTAL STAFF:

Andrea Tuttle, Director
Dean Lucke, Assistant Deputy Director
Gerald Ahlstrom, Forest Practice Staff Chief
Jim Mote, Regulations Coordinator

CALL TO ORDER

Chairman Dixon called the February 2002 Board of Forestry and Fire Protection meeting to order.

REPORT OF THE EXECUTIVE SESSION

Chairman Dixon reported that the Board met in Executive Session and asked Board's Executive Officer to provide the report on licensing matters.

Mr. Daniel Sendek, Executive Officer, reported that the Board dealt with the licensing issue of case 268, involving Stephen R. Horner, RPF 2441 of Arcata. He then provided the background of the case. As authorized under PRC 777, the Board and Mr. Horner entered into a Stipulated Agreement suspending Mr. Horner's license for a period of 90 days with 15 days actual suspension and the remainder 75 days stayed for probation for a period of 12 months after the actual suspension, making the total period of the Board order twelve and one half months. During this time, Mr. Horner will attend at least one professional level educational course or workshop that focuses on riparian protection and or considerations related to timber harvesting.

CONSERVATION IS WISE-KEEP CALIFORNIA GREEN AND GOLDEN

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Mr. Matthew Campbell, Deputy Attorney General and Counsel for the Board, reported that in the matter of a Civil Penalties action regarding Kenneth Bareilles, case number N2001040527, the Board voted to adopt the proposed decision issued by the Administrative Law Judge.

APPROVAL OF MINUTES

Acting Chair Dixon noted that the minutes for the Board's January meeting were not available.

REPORT OF THE CHAIRMAN

Acting Chair Dixon congratulated Member O'Dell for being reconfirmed by the Senate Rules Committee. He then announced that Governor Davis had asked him to serve as the Board's Chair. He stated that it was an honor to serve in this capacity. The Board will select a vice Chair during its March meeting.

REPORT OF THE DIRECTOR

Ms. Andrea Tuttle, Director of Forestry and Fire Protection, extended her congratulations to both Member O'Dell and Chairman Dixon. She then reported that classes at the Academy were ongoing. The McClellan move is proceeding and in May the Board may want to schedule a field trip to visit the new facility.

Director Tuttle reported that after 40 years of service to CDF, Glen Newman had retired, but that he was working in a retired annuitant capacity for the Department. She noted that about half of the Department's Chiefs were eligible for retirement. Jim Wright is the new Deputy Director for Fire Protection, and the Department is looking to fill his old position. Rich Green has been promoted to Chief of the Amador-El Dorado Unit.

Director Tuttle said that the Department's focus was on the state's budget. The state is facing a 12 billion-dollar short fall. In the budget, the public's health and safety programs were protected. She noted that the hiring freeze does not apply to fire fighters and that CDF's fire fighting activities did not receive any direct cuts. The Resource Protection Unit received a two-percent reduction in the current year and a three-percent for next year. This will result in the loss of some forest practice inspectors as well as a couple of FRAP personnel. The legislative hearings are scheduled for late April. She said that CDF has a base budget and can spend within the E-fund without additional authorization. If fire season is severe, CDF could go to the Legislature with a deficiency bill. The Governor suggested the E-fund be eliminated altogether and CDF be given spending authority above its base budget for whatever it takes during fire season and that CDF would be reimbursed by the Department of Finance rather than going to the Legislature.

Director Tuttle reported that there is an item in the budget affecting State Responsibility Areas. The budget proposes that the Department will find 20 million dollars in new reimbursements. The Department is exploring the perception that people are moving into the wildlands and seeking wildfire protection services, medical aid services, and other services CDF provides, but not paying their fair share of the costs.

Mr. Heald noted that in the California Fire Plan there are different levels of services that have been voluntarily developed because people in local areas decided they wanted to have an additional level of fire service. Being that there are many local districts that have different level of resources, he wanted to know how the Department could address the equity issue.

Director Tuttle said that the challenge will be to determine if new development moving into the wildlands has a sufficient review to ensure that they do have the fire protection resources.

REPORT OF THE OAK MORTALITY TASK FORCE

Mr. Mark Stanley, Assistant Deputy Director for Resource Management, and Chairman of the California Oak Mortality Task Force's (COMTF), referred to the COMTF monthly update in the Board's binder and reviewed it for the Members. He noted that redwood was not a confirmed host of Sudden Oak Death (SOD). A removal and utilization of high risk SOD host material project is being developed by the Biomass Utilization Committee. Two survey training sessions will be conducted for RPFs in March, one in the northern region and one in the southern region. In January, 14 million dollars in additional emergency funding to fight SOD had been authorized. The USDA Forest Service awarded CDF \$400,000.00 for the prevention of pathogen spread. He noted that eight state parks are affected by SOD. The federal government is considering imposing a quarantine to regulate plants and plant material for SOD. A hearing is scheduled for February 27, 2002.

Dr. Dave Risso, University of California, Davis, provided some background on California redwoods for the Board. He referred to a news article stating that SOD had been found in redwoods. After DNA testing, that was found to be erroneous. Multiple different diseases impact the trees in Marin County. Studies are ongoing and DNA testing is being done on multiple sites. He reviewed the process in determining infestation. New tests are being developed to determine if SOD does attach to redwood as a host.

Mr. Steve Bocken, California Department of Parks & Recreation, reported that policy to prevent the spread of the disease was being developed for State Parks and will be released soon. He noted that addressing these issues will be educational.

Mr. Ryneanson asked if there had been any change with California Department of Food and Agriculture (CDFA) policy or regulations.

Mr. Don Henry, CDFA, commented that there was no change in policy or regulation and that CDFA is monitoring the federal regulations. When federal regulations come out, they take precedence over state regulations. He noted that the February 27, 2002, meeting location had not yet be determined.

REPORT OF FEDERAL AGENCIES INCLUDING USDA FOREST SERVICE, NATIONAL MARINE FISHERIES SERVICE, US FISH & WILDLIFE SERVICE AND US ENVIRONMENTAL PROTECTION AGENCY

Ms. Christine Nota, USDA Forest Service, announced that the Regional Forester, Jack Blackwell, could not be at the February meeting, but hopes to attend the March meeting of the Board. She provided the Board with an update on the Sierra Nevada Framework review process. The review team is now in place and will send the Board a copy of its charter, including timelines and goals. The implementation team is currently implementing the Framework project. The inter-agency group is being reactivated and on February 20, 2002, will be meeting with the review-team and the implementation team to review the monitoring plan and determine what role they have in that process. The group consists of federal, local, and state agencies.

Ms. Nota reported that the Planning Regulations had been pulled back in for review and next month there will be a new draft out. The regulations will guide how the Forest Service does its Land Management Plan. All national forests in California will be revising their Land Management Plans in the near future.

Ms. Nota provided an update on the "Payment for States," which is the old 25 percent fund. Twenty-five percent of national forest receipts go to the counties to compensate them for their loss

of tax base. Due to the decline of timber sales in California, there has been a significant loss of revenue for the affected counties. New regulations allow 64 million dollars to go to the state of California to disburse to those affected counties, as well as some additional monies for Fire Safe Councils.

Mr. Joe Blum, National Marine Fisheries Service (NMFS), reported that an interim report on the Klamath River was under review and he will update the Board as the process develops. The Ninth Circuit Court stayed implementation of the Coho listing in Oregon. The review will continue and its progress reported to the Board.

REPORT ON THE ORGANIZATION OF WILDLAND FIRE PROTECTION SERVICES IN CALIFORNIA

Mr. Glen Newman, CDF Acting Deputy Director, provided a handout on the various fire protection systems on State Responsibility Areas and reviewed it for the Board. He noted that CDF was not responsible for structures, medical services, or vehicles. The Department is responsible for protection of wildlands. However, CDF does have the authority to provide medical aid at no additional cost to the state through the Emergency Services Act. He then described CDF's protection responsibilities in various areas.

PUBLIC HEARING; THE BOARD WILL HEAR AN APPEAL OF THE DIRECTOR'S RETURN, UNAPPROVED, OF TIMBER HARVESTING PLAN NO. 1-00-101 MEN

Mr. Daniel Sendek, Executive Officer of the Board, introduced the topic.

Mr. Rynearson recused himself from the proceedings.

Mr. William Snyder, Chief Deputy Forest Practice, provided the Board with a copy of the Department's reasons for its denial of THP 1-00-101 MEN. He reviewed the background and the reasons for the denial. He noted that the Pre-harvest Inspection (PHI) was attended by representatives from the National Marine Fisheries Service, the North Coast Regional Water Quality Control Board, the California Department of Fish and Game, and the California Department of Forestry and Fire Protection. PHI reports were received from these agencies. He reviewed the concerns and recommendations in those reports for the Board. The RPF made modifications and submitted changes following the first PHI to bring the plan into compliance. There was significant new information submitted, so a second PHI was conducted. Based on the recommendations from the second Review Team Chair and clear direction from NMFS that operations on the plan would likely result in unauthorized "take," the Director's representative advised the plan submitter that the plan would likely be denied. Attempts to address the concerns of NMFS were unsuccessful and there were no feasible measures that could be incorporated into the plan relative to operations on the 100-year flood-plain area.

Mr. Joe Blum, National Marine Fisheries Service (NMFS), explained that Charlotte Ambrose, a National Resource Specialist; and Dr. Brian Cluer, a Fluvial-Geomorphologist/Hydrologist would be providing a presentation; and that Dawn Andrews-McIntosh, General Counsel for NMFS is present to answer an legal question the Board may have. He noted that Coho is a listed species and that the standard is "no take." Forest Practices in California are not provided for in a 4(d) rule.

Ms. Ambrose, NMFS, then provided a power-point presentation (a hard copy was provided for the record and is available in the Board Office). She noted that in 15 years, the North Fork of the Gualala River has had 72 percent of its watershed under THP. The consequences of this cannot be fully understood until placed in context with the landscape conditions on both spatial and temporal scales.

Dr. Brian Cluer, NMFS, reported that he was present for the field review and was struck by the lack of data. He believes that the Plan could increase the level of added sediment and that the floodplains exist only due to trees. The mitigations are not sufficient to limiting potential impacts. Removing roughness creates a preferred flow path. He believes that approving the THP would contribute to further degradation of stream channels and fish habitat and denying it would contribute to the recovery.

Mr. Heald noted that in the appellant's documents, the sediment was very low. He asked if there were any off-site mitigation.

Dr. Cluer said that blocking the roads could decrease the likelihood of one of the channels choosing the course of one of those roads.

Mr. Heald: Can you think of any mitigation for roughness?

Dr. Cluer said that he could not.

Mr. Heald said that the submitters stated that the properties of Gualala River are not that different from others. Member Heald said that the watershed scale seems to be the issue.

Ms. Ambrose said that it would be difficult to make a broad base determination without that information available for the review. NMFS is here today to provide the Board with its assessment from what was seen on the ground, from the review of the THP operations, from internal discussions, and the proposed actions on the anticipated risk or effects on salmon.

Mr. O'Dell asked Dr. Cluer how long the roads had been there.

Dr. Cluer indicated that the roads had been there for some time.

Mr. O'Dell asked if the flood history and sediment source was looked into.

Dr. Cluer said that they were not.

Mr. O'Dell asked if the basin was straightened when it was clear-cut.

Dr. Cluer said that it was not, that it has always meandered.

Mr. Heald asked if reduced ground disturbance would help.

Dr. Cluer replied that high stumps with helicopter logging might mitigate.

Mr. Blum indicated that NMFS would look at new proposals.

Dr. Marty Berbach, Department of Fish and Game (DFG) said that DFG participated in the first PHI only. He noted that the concerns of DFG were proposed by qualified biologists, and addressed canopy cover, and retaining 10 trees per 1000 feet of watercourse. DFG reviews as a trustee agency of CEQA and not a federal agency. DFG supports the statements of NMFS.

Ms. Christine Wright-Shacklet, North Coast Regional Water Quality Control Board (NCRWQCB), indicated that the NCRWQCB supports CDF's decision of denial. The NCRWQCB participated in the three PHI's and two reviews. The Plan would result in Basin Plan violations. The Gualala's 303(d) listing in the Basin Plan causes consideration of the anti-degradation standard. They are reasonably controllable road construction, maintenance and buffer wildlands. The Basin Plan includes action plans which prohibit discharge in amounts

deleterious on the places where this could occur. The NCRWQCB believes that this Plan would discharge in amounts deleterious and that the Plan would add to cumulative effects.

Mr. Dave Hope provided a power-point presentation stressing concerns of the NCRWQCB on the effects of timber harvesting on the Gualala watershed.

Ms. Wright-Shacklet noted that existing roads are a source of sediment that cannot be dealt with in the THP.

Mr. O'Dell asked if there was exact data on the North Fork increased peak flows?

Mr. Hope said that there is no exact data.

Mr. O'Dell asked if the plan was sensitive to the basin size and water temperature.

Mr. Hope said that the cumulative effects are due to canopy removal.

Mr. O'Dell asked if Water Quality had filed a non-concurrence.

Mr. Hope said that there was no opportunity because the plan was denied.

Mr. Henry Alden, Resource Manager, Gualala Redwoods, Inc. (GRI), provided a copy of his written comments and reviewed them for the Board. He believes that the assessment of the condition of the North Fork of the Gualala River is wrong and that the THP would enhance habitat for salmon. GRI believes that THP 1-00-101 MEN is in compliance with the Forest Practice Rules. It will improve aquatic conditions and should be approved. NMFS did not make a case that "take" would occur only that the THP "would likely" result in a take of salmon. He believes that CDF has abused its authority and discretion by denying the plan based on NMFS's recommendations. Monitoring information collected over the last ten years points to a watershed that is healthy and getting better. The negative economic impact of denying this and other stalled THPs is enormous. Denying this THP would curtail watershed improvements and slow the recovery of the salmon runs we all seek to restore.

Dr. Steve Mader said that the issue is the biological risk assessment. Mechanisms for addressing this issue were not specified, qualified, or demonstrated. Site-specific information is required. He indicated that his conclusions were based on cause and effect.

Mr. Wayne Whitlock, Pillsbury and Winthrop, provided the Board with written comments that focused on the issue of "take" under the Endangered Species Act (ESA) as it relates to THP 1-00-101 MEN. He reviewed his handout for the Board and believes that the Board should reverse CDF's denial of THP 1-00-101 MEN and approve the Plan as proposed.

Mr. Heald asked if it is believed that there are legal standards to cause road repairs without the THP standards.

Mr. Alden said that he believed it could be done voluntarily, but he is not sure.

Mr. Heald asked if there was a sensitivity analysis used and if it was determined that further harvest would further degrade the watershed.

Dr. Mader indicated that it was determined that the methodology by NMFS was used as an example. This is not necessarily a no "take" determination. The lack of on-site information prevents the determination of "take."

Mr. Alden said that the issue is that there is no determination the THP implementation will result in a "take."

Mr. O'Dell asked for the history of environment settings.

Mr. Alden reviewed his photo record for the Board. It showed that in the 50s, the whole watershed was logged using clear-cuts and in the late 50s and 60s using tractor logging.

Mr. O'Dell asked why the meander has remained stable with past mistreatment.

Mr. Mader said that he did not know, but that Redwood Creek has thousands of years of aggradation through hydraulics that were not sufficient to move material to cut through the meander.

Mr. O'Dell inquired as to why modern practices would result in avulsion if past practices did not.

Mr. Mader said that the THP would not have any action that would impact the stream.

Mr. O'Dell asked for an example of risk that could cause "take" other than mechanical.

Mr. Whitlock reviewed recent case law on the Environmental Species Act for the Board and explained his view of those actions.

Mr. Marckwald discussed the potential of the short-term HCP guidelines being considered "underground regulations" with Mr. Whitlock.

Public comments

Mr. William Hultgren, California Licensed Foresters Association (CLFA), urged the Board to focus on plan review and approval regulations.

Mr. Alan Levine does not believe the Board is held to "proximate cause" and there is a need to support compliance with Basin Plan requirements.

Mr. Robert Di Perna, EPIC, urged the Board to uphold the denial based on the NMFS determination.

Mr. Chris Poehlman provided a power point showing that monitoring is not reflective of the actual ground conditions in the Gualala watershed.

Mr. Mark Rentz, California Forestry Association (CFA), provided the Board with his written comments and read portions into the record. He urged the Board to reverse the Director's denial and approve the plan.

Ms. Vivian Bolin said that she would like for the Board to uphold the Director's denial of the Plan based on cumulative impacts.

Ms. Britt Bailey, Gualala Municipal Advisory Council, noted that the County plan requires improvement of coastal environment. She asked that the Board uphold the denial.

Mr. Traci Thiele, Humboldt Watershed Council (HWC), provided the Board with handouts. She noted that the Habitat Conservation Guidelines are real rules under take prohibition and asked that the Board uphold the Director's denial of the Plan.

Mr. Kevin Collins said that erosion was not just a road issue. He believes that the Board is required by law to uphold the denial.

Mr. Richard Gienger, HWC, urged the Board to support the Director's denial. Protection of areas that are beginning to recover is a must.

Mr. Craig Bell, SRF and NCARG, noted that it is a tourist dependent economy. There is a need for emergency actions to protect the fish population.

Mr. Peter Ribar, Campbell Timberland, asked that the Board approve the THP noting that there was a lack of specific information.

Mr. Neil Fisher believes that the denial of the Plan would legally be an indefensible position and questioned why NMFS did not claim "take."

Mr. Steve Levesque, Campbell Timberland, said that he did not see how short-term guidelines to prevent "take" were addressed.

Mr. Dan Weldon, Forest Landowners of California (FLOC), urged the Board to reverse the Director's decision and approve the Plan.

Mr. David Bischel, President of California Forestry Association (CFA), said that CFA supports the reversal of the Director's denial. He cited the lack of site-specific evidence, questioned if the appropriate regulations were being used, and the legal standing of the determination of "likely to take," as reasons for approval of the Plan.

Mr. Warren Alford, Sierra Club, spoke in support of the Director's decision. He believes that cumulative effects were not addressed and that there is a need for regulatory changes on cumulative effects.

Mr. Tom Cochran, Geologist, said that the evidence should not be ignored. He believes that harvest should be delayed for 10 years. There is only anecdotal evidence available. Cumulative effects of one plan may not be important, but when 80 percent is harvested in 14 years, each plan becomes important.

Ms. Kathleen Morgan, Sea Ranch, believes that the data needs to be qualified. She noted that the photos had not been labeled. The monitoring indicates that the upper watershed is hot until it enters timber, then cools. She said that there was no outside funding for GRI improvement projects.

Mr. Bernie Bush, Forest Resource Council, urged the Board to overturn the Director's denial of the Plan.

Chairman Dixon asked Counsel a procedural question.

Mr. Matthew Campbell, Deputy Attorney General and Board's Counsel, said that the Board could close the public hearing and ask questions of the agencies.

Chairman Dixon said that the past procedure has been to allow the Director and the plan submitter to summarize, then the Board closes the hearing.

Mr. Norm Hill, Chief Counsel for the Department, indicated that it is correct that a determination of "take" does harm, including actual injury. There is evidence of sedimentation that would kill salmon. There is abuse of discretion when there is no evidence of species presence, beyond potential habitat. The Department believes that it has received the facts from NMFS. The advice from NMFS constitutes expert opinion. CDF believes that sufficient risk of "take" exists. When there are dueling scientists, the greater weight goes to the agency.

Mr. Alden said that cause and effect have been shown, and he believes this is a serious issue that will affect other timber harvest projects on the North Coast.

Mr. Whitlock said that this is a policy issue. Evidence needs to be submitted to support the Department's position and noted his disagreement with the weight given to the recommendation by NMFS.

Mr. Bosetti asked the Department, referring to testimony regarding cumulative effects, if non-concurrence occurred on any other recent THPs.

Mr. Snyder said that there had been on at least one plan. That plan was approved.

Mr. Bosetti then asked if any plans were approved where the non-concurrence stated that cumulative effects would occur.

Mr. Snyder said that he does not know of any plans that came to that conclusion.

Mr. Bosetti asked if there had been any mention to the flood plain in the Federal Register.

Ms. Dawn Andrews-McIntosh, NMFS Counsel, replied that, as of today, they did not know.

02-02-1 Mr. Heald moved to close the public hearing. Mr. O'Dell seconded the motion, and all were in favor.

Mr. Heald noted that the letter of denial is clearly "likely to take," but goes on to describe mitigations not accepted, and it further states that mitigations may be infeasible. He asked the Department what was driving the issue behind the denial.

Mr. Snyder said that the Department's position was based on 898.2(d), and further discussion with agencies revealed no mitigations that would avoid "take."

Mr. Heald asked if NMFS attributed any difference in the wording of "likely," "would," or "reasonable certainty."

Ms. McIntosh said that "likely to result" is used interchangeably with "would."

Mr. Heald said that he appreciated all the testimony. He believes that CDF's decision based on 898.2(d) is valid and that "likely" does not give him pause. The Department has a duty to rely on other agencies for expertise. He said that the question is whether it conforms to the rules and regulations of the Board. He expressed concern regarding photos of areas not in question. There is a need to move to models to show linkage to real environmental effects. He does not believe that the expert opinion of trustee agencies has been refuted and that the Plan must be disapproved.

Mr. Sendek, Executive Officer for the Board, read 14 California Code of Regulations §1054.8 into the record.

Mr. O'Dell expressed his appreciation for the testimony. He believes that the charge of the Board is very narrow, it must decide if the Plan is in conformance. The letter of denial is very specific: "likely to take" salmon. He said that this Plan should be approved. He does not believe that there is any soft rule with the word "would" meaning "likely" so that taking would occur. He believes that the Plan is in conformance and the Board should overturn the Director's denial.

02-02-2 Mr. O'Dell moved to approve the Plan. Mr. Bosetti seconded the motion, and a roll call vote was taken.

Bosetti	Aye
Heald	Nay
Marckwald	Nay
O'Dell	Aye
Dixon	Nay

The motion failed by a 2-3 vote.

02-02-3 Mr. Heald said that since the Plan is not in conformance with the rules based upon “would likely” result in a “take” of a federally listed threatened species, he moved to disapprove the Plan. Mr. Marckwald seconded the motion, and a roll call vote was taken:

Bosetti	Nay
Heald	Aye
Marckwald	Aye
O/Dell	Nay
Dixon	Aye

The motion passed with a 3-2 vote.

Mr. Campbell suggested that for clarification, the Board produce finding for the bases of its decision.

Mr. Heald said that the reason for his motion was that the THP operations, as presented in record, would likely result in the unauthorized taking of a federally listed anadromous Salmonid. He believed that statement to be sufficient.

ADVISORY COMMITTEE REPORTS

FOREST PEST COUNCIL REPORT

Mr. Scott Johnson, Chairman of the California Forest Pest Council, thanked the Board for the Resolution presented to the Pest Council at its Annual meeting in Redding. He reported that a new Resolution would be forthcoming to the Board.

RANGE MANAGEMENT ADVISORY COMMITTEE (RMAC)

Mr. Tom Randolph, Secretary to the RMAC, noted that RMAC had not met since the Board's last meeting. RMAC has been working with the UC Extension on putting together workshops for agencies and that effort has been very successful. Two workshops have been conducted thus far, one Hopland and one at Sierra Field Station. Eight sites were reviewed. There will be two more workshops, one at the San Joaquin Field Station and the other at Cal-Poly San Luis Obispo. When they are completed and the data gathered, RMAC would like to provide the Board with a presentation showing the effect the workshops has had on agencies.

Mr. Randolph asked if the Board was prepared to give the California Fuel Hazard Reduction Act its support as proposed by RMAC during the Board's January meeting.

Chairman Dixon suggested that the item be put on the Board's Resource Protection Committee agenda for next month.

Mr. Randolph noted that there are several members of RMAC whose terms have expired and asked about the procedure to reappoint. There are also two public member vacancies.

Mr. Sendek, Executive Officer for the Board, said that a nomination committee needed to be formed to review nominations for public members. Organization members are selected by specified organizations.

Mr. Randolph announced that the RMAC Water Quality Sub-committee would meet on February 20, 2002, to discuss its strategic plan, and on February 21, 2002, the regular RMAC meeting would be held here in Sacramento.

It was decided that Member Bosetti and Chairman Dixon would serve as the committee to review the RMAC nominations.

MONITORING STUDY GROUP (MSG)

Mr. Pete Cafferata, CDF, Resource Management Hydrologist, provided an update on the MSG activities. The next meeting will be February 19, 2002, at Howard Forest. He indicated that there has been considerable interest in the Water Quality Monitoring Workshop from the industry and environmental communities, because the session was limited to only agency personnel. He provided a brief summary on products being developed from the workshop. CDF has produced a draft summary of the workshop that is being edited by the NCRWQCB, CGS, and DFG. MSG will provide copies of the draft at its February 19, 2002, meeting. The draft summary has been distributed to a number of resource professionals throughout the state. Information has begun to come in, nominating several new watersheds as candidate reference basins. An updated spreadsheet will be provided on February 19. He noted that he has been asked to represent MSG and participate in writing a paper titled, "Programs Assessing Implementation and Effectiveness of State Forest Practice Rules in the West," along with ODF and Plum Creek Timber Company representatives.

PROFESSIONAL FORESTERS EXAMINING COMMITTEE (PFEC)

Chairman Dixon noted that the Chairman of the PFEC would provide the quarterly report during the Board's next meeting.

STANDING COMMITTEE REPORTS

INTERIM COMMITTEE

Mr. Heald, Chair of the Interim Committee, reported that the Committee spent most of the meeting on its agenda item number one, the less than 3-acre conversion exemption language. The Committee produced a revised set of strikeout and underscore language in an effort to meet the July 1, 2002, deadline. The Committee agreed to put the other items on the March agenda, which includes, stocking credit for retention of large trees, review of oak retention standards, and the biomass thinning exemption.

Mr. Rynearson noted that under New Business, it was suggested that the Board develop a policy wherein a review of all new rule packages occurs six months following the implementation date of those packages and then making that review an agenda item for the Board to evaluate how that particular rule had been implemented.

Mr. O'Dell suggested that rather than a time certain, perhaps within the first quarter or first half for review.

Mr. Bosetti reviewed the current process and said that he would like to see that when a package is passed by the Board, how the Department then takes it and moves ahead with implementation. An overall commitment to Board involvement is the issue.

Mr. Heald said that the Board owes it to the public that when it makes a rule change, it follows up on it.

Mr. Rynearson suggested that if there were a review within six months of any rule change, and those reviews put on the Board's agenda every year during May or June, then there would always be a consistent formalized review period.

Chairman Dixon suggested that Member Rynearson draft some policy language and take it to the Committee.

Mr. Marckwald said that he had some concerns regarding linkages.

RESOURCE PROTECTION COMMITTEE (RPC)

Mr. Bosetti reported that the Department's new Deputy Chief for Fire Protection, Jim Wright, provided the Committee with a report similar to the report given earlier by Director Tuttle. One item requiring Board attention has to do with the implementation of AB 62. The Department made a presentation on SOD relative to AB 62. The Board authorized the Department to enter into a contract with Marin County to develop a Hazard Tree Disposal proposal process. A process of approval for proposals received from the County needs to be developed by the Board. The Committee then discussed the process and that it will require Board approval. It could be done with a sub-committee of the Board or with the full Board. All would require 10-day noticing.

Mr. Marckwald believes that the subcommittee would be the most efficient way to go.

Chairman Dixon suggested that the RPC would be the appropriate sub-committee to address the process.

Mr. Matthew Campbell, Deputy Attorney General and Counsel to the Board, suggested that the Committee members be allowed to take action then bring the issue back to the full Board for ratification. He expressed some concerns regarding the Department of Finance (DOF) issuing checks with direction from the Committee, as opposed to the full Board.

Mr. Marckwald suggested that the Executive Officer contact the DOF regarding those concerns.

Chairman Dixon asked the Department when it expected the first of the proposal to come forth.

Mr. Stephen Jones, CDF, explained that no contracts had been processed yet and that it would take a couple of months once they start to come in.

Mr. Bosetti reported that the Committee had gone through the five-year review of the SRA and the Board had put it out to notice for a hearing in March.

AD HOC WATERSHED COMMITTEE (AD HOC)

Mr. Rynearson, Chair of the *Ad Hoc* Committee, reported that the Committee had good discussions with public and agencies represented. The question of where to go from here was raised. The IWMA does not exist outside of the Threatened and Impaired (T & I) rules package.

Mr. Ryneanson noted that most of the concerns expressed by the Office of Administration Law (OAL) were addressed and the IWMA package should be ready to move to the Board in March.

Mr. Ryneanson noted that the Roads package may affect the T & I package and the Committee is looking for direction from the Board. The Committee still has one section that needs some work.

Mr. Ryneanson then referred back to the Committee's agenda item one and a discussion of how the T & I and IWMA packages fit together and where the Roads package fit it. There was a discussion on how the packages should be linked. The Roads package will take some time. The Committee did request that the full Board talk about the timing of the IWMA package. Also, the issue was raised that the Roads package would affect the T & I. He wanted to know if the Committee should move ahead, or wait until later in the year.

Mr. Ryneanson reported that under New and Unfinished Business, the Committee received a report from the Department's FRAP unit and the Resources Agency on the North Coast Water Assessment Program. Redwood Creek, Gualala, and Mattole draft reports are out for review and must go to the Legislature by May 1, 2002. He noted that they are living documents.

Mr. Heald does not believe that the IWMA could survive without the T & I.

Mr. O'Dell noted that the implementation date is always the first of the year. It may be necessary to hold back the T & I in light of the Department of Fish and Game (DFG) 2084 rules moving through. There may be a need for the capability of being able to accommodate 2084 in the T & I package.

Dr. Marty Berbach, Department of Fish and Game, indicated that by May the 2084 order should go away. If DFG takes action it would only be a listing action without reliance on the T & I package. He explained the 2081(b) and 2090.1 and the concerns of the Habitat Conservation Plan for the Board.

Mr. Marckwald believes that if the IWMA package moves out, there would be a need to change the T & I sunset date.

Chairman Dixon said that he would like to see the IWMA and T & I get noticed and moving so that the Board could then concentrate on the Roads package.

Following more discussion, Mr. Campbell, Deputy Attorney General and Counsel for the Board, indicated that it would be more prudent to notice the action as an agenda item for the Board. This agenda does not provide sufficient notice requirements.

Chairman Dixon directed staff to put it on the March Board agenda.

Mr. Marckwald noted that he would not be attending the March meeting and wanted to vote on these issues.

Mr. Heald suggested that staff prepare 15 and 45-day notices for the IWMA and T & I packages respectively to be considered at the March meeting.

PUBLIC FORUM

Ms. Trinda Bedrossian, Supervising Geologist with the California Geological Survey (CGS), noted that the reason for the name change from Department of Mines and Geology to California Geological Survey was in an effort to be consistent with 40 other states. She reviewed the

Geological Survey background for the Board, noting that California is the largest Geological Survey in the country.

Ms. Bedrossian announced that the Noyo Watershed CD is available at a cost of \$40 dollars per CD. Hard copies will be available for those requesting them, but she was not sure how much they would be. She noted that CGS provided the Board with a copy of the CDC GIS data.

Ms. Bedrossian announced that CGS was working on AEG workshops on engineering geology for wildlands. She said that the workshops would be a little more technical than in the past.

Mr. Bernie Bush, Redwood Creek Landowners Association (RCLA), reported that the RCLA was in its second year of stream tracking. The final report for 2001 should be completed later this week. It is on the agenda for the North Coast Resource Water Quality Control Board. If this Board would like a presentation on their findings, he could arrange it. He noted that this tracking effort would continue for another four or five years.

Chairman Dixon said that the Board would like to have a presentation of those efforts and directed staff to schedule it for a future meeting.

Mr. Peter Ribar, Campbell Timberland, commended the Board on the discussion of forming a follow-up process to track rules and their implementation. He then urged the Board to provide the THP review workshop as soon as possible.

Mr. Richard Gienger said that it was good for the public to see the Board support the another agency's perspective regarding the Gualala watershed and would encourage sister agencies to provide similar support. He noted that he was unhappy with the rule changes regarding spawning habitat. He encouraged the Board to move ahead with a series of workshops and a formal presentation on the Dunne Report. He provided a copy of the Notice of Proposed Rulemaking Hearing document and reviewed it for the Board.

Mr. Robert Di Perna, EPIC, reported that on January 25, 2002, the Department began processing THPs in the Elk River Watershed for the first time since 1999. He reviewed some background for the Board. He said that now the Department is saying that, based on an analysis that was conducted of peak flows, 600 acres a year is an appropriate rate of harvest for the Elk River. EPIC disagrees with that assessment. He said that an analysis conducted by the Regional Water Quality Control Board, released in February and based on channel sediment, indicated that the Department's current projections would not reduce flooding impacts in Elk River and, in time, would increase the flooding impacts.

Ms. Traci Thiele, Humboldt Watershed Council (HWC), provided handouts for the Board. She believes that people in the Elk River watershed were losing their livelihoods. Eighty percent of Bridge Creek had been harvested in the last four years. She noted that there have been a couple of landslides in Bridge Creek.

Mr. Dan Weldon, Forest Landowners of California (FLOC), announced that the FLOC annual meeting will be held April 25-27, 2002, in Redding and will focus on fuels management and protection for small landowners. He invited the Board to attend. There will be a field trip to the North Operations area looking at FireSafe projects.

Mr. Warren Alford, Sierra Club, expressed concern over the SPI impacts in the Sierra Nevada. Also, the use of herbicides and the domestic water supply. He then suggested a few items that the Sierra Club believes needs to be addressed by the Board.

AGENCY INPUT ON THE PROPOSALS OF THE STEWARDSHIP COMMITTEE REGARDING ALTERNATIVES TO EXISTING REGULATORY CONTROLS ON TIMBER HARVESTING AND THE PRESENTATION OF THREE PROPOSED PILOT PROJECTS: "THE CHARTER FOREST FARM", "INTERAGENCY WATERSHED ASSESSMENT TEAM", AND "STEWARDSHIP NTMP"

Chairman Dixon introduced the topic.

Mr. Daniel Sendek, Executive Officer for the Board, said that at the conclusion of the Board meeting last month, the Board requested the agencies involved to come back with their input regarding feasibility, manpower, budgeting, and practicality. He contacted the DFG, CGS, NMFS, FFWS, CDF, and the Water Board. The level of response varied.

Mr. Dean Lucke, Assistant Deputy Director, Forest Practice, said that of the three proposals, the Department plans to hire a retired annuitant to work on the Stewardship proposal and move forward with that. The Department has the ability to provide staff for the two pilot projects. However, once the analysis is completed, the Department would need to consider if it could continue to provide support. The Department does not have the ability to support the IWAT, but a Cal-Fed grant has been applied for to do a PTEIR. CDF will participate in that process to see if it could apply to the IWAT. The IWAT is very staff intensive.

Dr. Marty Berbach, Department of Fish and Game (DFG), said that DFG is very much on board with small landowners relief of some kind. DFG will continue to work with the Stewardship and NTMP program. Whether DFG issues any permits or not will depend on if NMFS lists any Coho in May. DFG will be in an advisory roll. Regarding the Charter Forest, four of the DFG field offices have indicated that they could participate in a pilot project. Regarding a statewide program of the Charter process, DFG would need additional personnel. DFG believes the IWAT to be a two-year process and could not spare the personnel at this time.

Ms. Trinda Bedrossian, Supervising Geologist with the California Geological Survey (CGS), referred to the CGS memo to the Board stating that CGS could provide four to six employees on the Stewardship and NTMP program. However, if it were ongoing, CGS would need additional staffing. For the Charter Forest, CGS would be able to add ½ PY over the next two years. CGS believes that it would probably take a whole PY to do the job correctly. For the IWAT, CGS is not able to redirect staff for this project.

Mr. Gaylon Lee, State Water Resources Control Board, reported that due to the state budget, the SWRCB cannot commit to the level resources that it has over this past year. He believes that the Charter Forest has the best opportunity for moving quickly because it does not require changes in the rules. He agreed with others that if it goes into full-term, that would likely involve more resources than the SWRCB could provide.

Ms. Charlotte Ambrose, National Marine Fisheries Service (NMFS), believes that this is a unique opportunity to talk about some of the issues that are overwhelming the THP process. The progress that this group has made and the commitment of its members encourage NMFS. NMFS believes that all proposals are worthy and the agency is committed to the Stewardship NTMP and will remain so. NMFS believes that that committee can develop a product for small forest landowners that meets the 4(d) requirements.

Mr. Mark Hite, CDF, said that the Charter Forest is the most advanced and could be enacted quickly. The Stewardship proposal has some issues that need to be worked out and the IWAT is a major commit of staff. The next step will be to poll members of the committees regarding their desires and whether they want to meet again as a committee or in their subgroups to finalize details.

Chairman Dixon the Board will be supportive in any fashion it can to facilitate these efforts.

Mr. Richard Gienger expressed his gratitude to the Board and CDF in helping with this process. The Administration needs to be aware of the importance of meeting the needs of the small landowner. He encouraged the Board to send a resolution to the Governor requesting that he and his staff to consider the importance of coming to grips with this issue. He believes that the Board should do what it can to obtain funding.

Mr. Dan Weldon, Forest Landowners of California (FLOC), said that FLOC has been encouraging the Western Shasta Resource Conservation District to apply for a PTEIR for the Cow Creek Watershed east of Redding. FLOC is still working with the RCD. FLOC believes that this process holds real opportunities, encompasses the IWAT evaluations of a watershed and the promise of regulatory relief for the small landowner. He encouraged the Board to do all it can to get the pilot programs underway.

Mr. Heald indicated he was up for doing anything that would be effective.

Mr. Ryneason believes that the Board needs to send a strong statement back to the Committee that it is supportive of their efforts and will work with the group as possible.

Ms. Bedrossian said that there needs to be strong leadership and suggested one of the Committee or Board members survey the complexities of these issues.

Mr. Heald noted that the Board is a policy and regulatory board and that the Department should take on that responsibility.

CONTINUED DISCUSSION OF “SENSITIVE SPECIES” DESIGNATION (14 CCR §919.12 [939.12, 959.12] INCLUDING A REVIEW OF THE APRIL 1990 REPORT OF THE BOARD’S WILDLIFE HABITAT/FOREST PRACTICE TASK FORCE: RECOMMENDATIONS TO THE CALIFORNIA STATE BOARD OF FORESTRY ON THE MANAGEMENT OF WILDLIFE HABITATS UNDER THE FOREST PRACTICE ACT

Chairman Dixon introduced the topic.

Mr. Daniel Sendek, Executive Officer for the Board, provided some background. This issue originated with the filing of a petition for the Northern Goshawk to be removed from the Sensitive Species designation. This generated a discussion of the criteria of the designation for Sensitive Species. The Board received presentations from agencies discussing the issue. At that time, the Chairman requested that the Board familiarize itself with the April 1990 Designation of Sensitive Species report.

Mr. O'Dell said that he believes that the issue should go to Committee for further discussion.

There was some discussion as to which committee the discussion should go.

Mr. Heald said that he believes that the Interim Committee would be a good place for the discussion of Sensitive Species designation.

REPORT OF THE EXECUTIVE OFFICER

Mr. Daniel Sendek, Executive Officer for the Board, reviewed the Board's 2002 meeting schedule. Previously, the Board was scheduled to meet in June in Redding and tour the Latour Demonstration State Forest. However, due to the heavy snowfall in that area, it was

recommended that July would be better for that area. The Board will meet in Marin for the June meeting.

Mr. Sendek then reviewed current legislation for the Board. He reported on SB 909, the legislation extending THP review time. Last month, the Board directed staff to prepare a 45-day notice for filing. Staff did some research with the Office of Administrative Law (OAL), and it was the opinion of staff that the Board could pass the package by way of a section 100 change. The Board is still required to hold a public hearing under the Public Resources Code, but it could be done under a 30-day notice. He asked for Board concurrence with staff pursuing a section 100 change instead a full 45-day notice under the APA process.

The Board had no objection.

Mr. Sendek noted that Member Rynearson was re-appointed on January 15, 2002, subject to Senate confirmation and Mr. Dixon was also re-appointed, subject to confirmation. Mr. Dixon was also appointed as Board Chair at that time. On January 17, 2002, Paula Ross submitted a letter to Governor Davis requesting that her name be withdrawn from consideration. February 4, 2002, was the deadline for Mr. Waters' confirmation hearing by the Senate Rules Committee, it was not held and he may no longer serve as a member of the Board. He noted that the Board is currently down to six members.

Mr. Sendek noted that there was a publication by the Watershed Management Council containing summaries of the presentations given at the Board's watershed workshop held last April. He said that if any Board members wanted a copy, he would provide to them.

NEW AND UNFINISHED BUSINESS

Chairman Dixon asked that the Interim and *Ad Hoc* Committee Chairs meet as soon as possible to finalize arrangements for the workshop for the THP review process.

ADJOURNMENT

Acting Chair Dixon adjourned the February 2002 meeting of the Board.

Respectfully submitted,

ATTEST:

Daniel R. Sendek
Executive Officer

Stan Dixon
Chair

Copies of the attendance sheets can be obtained from the Board Office.